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15
16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

18 In Re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. Master File No. 3:07-cv-05944-SC

MDL NO. 1917

19 This Document Relates to:

**LG ELECTRONICS, INC.'S RESPONSE
TO DIRECT ACTION PLAINTIFFS'
MOTION IN LIMINE #15 TO ADMIT
TESTIMONY OF SUMMARY WITNESS**

20
21 *Best Buy Co., Inc., et al. v. Hitachi, Ltd., et al.,*
22 No. 11-cv-05513

Judge: Hon. Samuel Conti

Date: None Set

Ctrm: 1, 17th Floor

23 *Best Buy Co., et al. v. Technicolor SA, et al.,*
24 No. 13-cv-05264

25 *Sears, Roebuck and Co. and Kmart Corp. v.*
26 *Technicolor SA, No. 3:13-cv-05262*

27 *Sears, Roebuck and Co. and Kmart Corp. v.*
28 *Chunghwa Picture Tubes, Ltd., No. 11-cv-*
05514

1 *Sharp Electronics Corp., et al. v. Hitachi Ltd.,*
2 *et al.*, No. 13-cv-1173

3 *Sharp Electronics Corp., et al. v. Koninklijke*
4 *Philips Elecs., N.V., et al.*, No. 13-cv-2776

5 *Siegel v. Hitachi, Ltd.*, No. 11-cv-05502

6 *Siegel v. Technicolor SA*, No. 13-cv-05261

7 *Target Corp. v. Chunghwa Picture Tubes,*
8 *Ltd.*, No. 11-cv-05514

9 *Target Corp. v. Technicolor SA*, No. 13-cv-
10 05686

11 *ViewSonic Corporation v. Chunghwa Picture*
12 *Tubes Ltd.*, No. 14-cv-2510

1 Plaintiffs' Motion *in Limine* No. 15 seeks a pretrial ruling that Daniel Gill and Sean Chen
2 can testify at trial as summary witnesses on an unknown volume of unidentified documents
3 pursuant to Federal Rule of Evidence 611(a) and 1006. Although Defendant LG Electronics, Inc.
4 ("LGE") acknowledges the Court's authority to admit summary exhibits at trial subject to the
5 requirements of the Federal Rules of Evidence, it respectfully requests that the Court deny
6 Plaintiffs' motion as premature.

7 Plaintiffs state that they "are not seeking pre-admission of any trial exhibits" but instead
8 are "simply seeking a determination that they will be allowed to present summary testimony along
9 the [] lines" described in the motion. Motion *in Limine* No. 15 at 63 (ECF No. 3558). Plaintiffs
10 fail to support this vague request with the actual substance of the proposed summary testimony of
11 either summary witness, the proposed summary exhibits, or the documents that would form the
12 basis of the testimony or exhibits. Therefore, LGE lacks the necessary information to evaluate the
13 admissibility of the proposed summary witness testimony or to lodge any and all appropriate
14 objections at this time.¹

15 Once Plaintiffs identify the documents to be summarized and complete the summary
16 exhibits about which Messrs. Gill and Chen intend to testify, LGE is willing to meet and confer
17 with Plaintiffs on the admissibility of the proposed testimony, summary exhibits, and underlying
18 documents. As LGE informed Plaintiffs at an in-person, pretrial meet and confer on February 5,
19 2015, LGE likewise intends to utilize a summary witness to summarize similar documents
20 pursuant to Federal Rule of Evidence 1006.² Rather than make any pretrial rulings at this time on
21 the admissibility of summary witness testimony, LGE respectfully requests that the Court deny
22 Plaintiffs' motion so as to give the parties the opportunity to meet and confer and eliminate or
23 narrow any disputes that need to be presented to the Court prior to the new trial date.

24 _____
25 ¹ To the extent the Court determines at this time that Plaintiffs are permitted to present the
26 proposed summary witness testimony from Messrs. Gill and Chen, LGE respectfully reserves the
27 right to assert any and all objections as to their testimony and/or any summary exhibits offered by
28 Plaintiffs.

² LGE reserves the right to disclose the identity of a summary witness and make summary exhibits
available to Plaintiffs in accordance with new pre-trial deadlines set by the Court.

1 A similar approach was taken in the *LCD* litigation. There, the Best Buy and Target
 2 plaintiffs filed a similar motion *in limine* with a nebulous request for a pretrial ruling to admit
 3 summary witness testimony. Judge Susan Illston denied the motion “as premature.” Final Pretrial
 4 Scheduling Order – Phase 1 DAP Trial at 5, *In re TFT-LCD Flat Panel Antitrust Litig.*, No. 3:07-
 5 md-01827-SI (N.D. Cal. July 11, 2013) (ECF No. 8298). In the Costco *LCD* litigation, Judge
 6 Richard Jones reserved ruling on a motion *in limine* regarding the summary witness testimony of
 7 Daniel Gill, one of the proposed witnesses here. *Costco Wholesale Corp. v. AU Optronics Corp.*,
 8 No. C13-1207RAJ, 2014 WL 4674390, at *14 (W.D. Wash. Sept. 17, 2014) (reserving ruling on
 9 motion on the ground that “Costco has yet to complete the summary exhibits about which Daniel
 10 Gill will testify, and the parties have promised to meet and confer to narrow or eliminate their
 11 disputes about his exhibits and testimony”). Judge Jones’ decision to reserve ruling on the motion
 12 proved prescient, because Costco did not call Mr. Gill to testify at trial.

13 As in the *LCD* cases, a pretrial ruling allowing summary witness testimony based on
 14 unidentified documents or summary exhibits would be premature. Accordingly, Plaintiffs’ Motion
 15 *in Limine* No. 15 should be denied.

16 Dated: February 27, 2015

Respectfully submitted,

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